

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

**Plaintiff,**

**No. 1:18-CR-3495-001 JCH**

**vs.**

**DOUGLAS D. SMITH,**

**Defendant.**

**DEFENDANT'S PROPOSED VOIR DIRE**

Douglas D. Smith, by and through his counsel of record Assistant Federal Public Defenders Aric G. Elsenheimer and Amanda R. Lavin, respectfully requests that this Honorable Court *voir dire* jurors by asking the following questions:

**Self-Defense or Defense of Dwelling**

1. Has anyone ever been placed in a situation where they had to defend themselves against a physical attack?
  
2. Tell us about the most frightening experience you or someone you know had when they were threatened by another person.

3. Tell me about the most serious situation you have ever seen where someone had no choice but to use violence to defend themselves (or someone else).

4. Has anyone been in fear for his or her life?

5. When is it appropriate to use force in defense of one's self?

6. Under what circumstances do you think someone can defend their life or the life of someone else who is threatened?

7. Under what circumstances would you expect someone not to defend themselves or someone else in peril?

8. Have you ever felt that your home or property was threatened or in danger? What did you do?

9. Are you aware that in New Mexico, a person who is threatened with attack "need not retreat?" What does that mean to you?

### **Accident**

10. Tell us about the most serious mistake you or someone you know has ever made because you or that person jumped to a snap conclusion.

11. Do you think you make good decisions or have good judgement when you are afraid? Why or why not?

12. What does fear feel like? How do you react to a fearful situation?

13. Tell us about the craziest thing you or someone close to you ever did out of fear.

### **Law Enforcement**

14. Would you give more weight to what a law enforcement officer says because of his badge of office than you would to the defendant or witnesses who testify on behalf of the defendant?

15. How many of you think federal law enforcement agencies rarely make a mistake? Why? What could cause a law enforcement investigator to jump to the wrong conclusion?

16. There will be witnesses called during this trial who are members of law enforcement and who may have been in that profession for a number of years. Is there anything about the law enforcement profession and/or about the witness having been engaged in such

profession for a number of years that would cause you to either give greater or lesser weight or credibility to their testimony solely by virtue of their employment in law enforcement?

**Burden of Proof**

17. Let me ask you about the burden of proof. I am sure you have all heard that phrase. In a criminal case, the government, and only the government, bears the burden of proof. They must prove each and every element of their case. How do you feel about the burden of proof of beyond a reasonable doubt being placed on the government?

18. How do you feel about there being no burden of proof on the defendant?

19. I want to talk with you about the presumption of innocence. In our democracy, someone who is charged with a crime is presumed innocent and they have the right to remain silent. That means they do not need to testify, at all, in their case. Who would need to hear from Mr. Smith to make a decision?

### **Defendant Did Not Testify**

20. Are there reasons that an innocent person would not speak in their defense?

### **Statements to Law Enforcement**

21. Have you ever given a statement to a law enforcement officer? Were you nervous and did you speak perfectly?

22. Could a stressful situation cause you to not speak perfectly?

23. Have you ever had to testify in court? Could you tell us about this experience?

### **Opinion of Mr. Smith**

24. Do any members of the panel have an opinion of Mr. Smith because he is a defendant in this case, or because you heard the charges pending against him? Or for any reason? Do you think he is guilty? When you walked in did you “wonder what he did?”

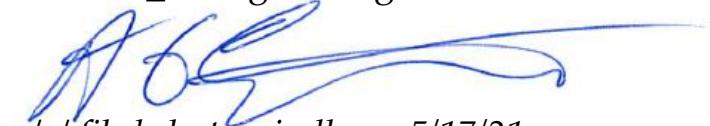
### Unanimous Decision

25. If you were selected to serve as a juror, how would you respond if you were the only juror among the group who wanted to vote not guilty?

In addition to these proposed questions, counsel for Mr. Smith may respectfully request leave of this Honorable Court to pose other questions directly to the prospective jury panel.

Respectfully submitted,

FEDERAL PUBLIC DEFENDER  
111 Lomas Blvd., NW, Suite 501  
Albuquerque, NM 87102  
(505) 346-2489  
(505) 346-2494 Fax  
aric\_elsenheimer@fd.org  
amanda\_laving@fd.org



/s/ filed electronically on 5/17/21  
ARIC G. ELSENHEIMER, AFPD  
AMANDA R. LAVIN, AFPD  
Attorneys for Defendant